

## 論美國食品輸入的「免驗查扣」制度

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### 摘 要

免驗查扣制度目的在於以預警角度，避免美國國內消費者因食用問題食品、藥品而受有損害。該制度能使美國食品藥物監督管理局（Food and Drug Administration, FDA）以快速警示之方式，將問題食品扣留於邊境，以保護美國國內消費者不會購買到問題食品及藥品。該制度雖具快速、經濟之特色，惟其本質上仍有侷限，如無法即時發現問題食品來源，導致無法有效杜絕問題食品的進口；或構成世界貿易組織（World Trade Organization, WTO）規定的貿易障礙。惟此制度賦予 FDA 極大權限，使 FDA 無須嚴謹證據，基於進口食品表徵上似有違法即可直接將產品於邊境扣留並禁止進口，可轉移進口國的舉證責任，將政治爭議導入法律程序解決。本文撰寫目的乃為瞭解美國免驗查扣制度之運作，另一方面淺析此制度於實務運作上之問題，並為

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我國提出更具體、更全面的制度性介紹及建議。故撰文架構將從免驗查扣制度介紹，重要案例探討免驗查扣制度之運作及問題，最後討論該制度在WTO 架構下的爭議。結論中將比較我國現行制度與免驗查扣制度之差異，提出修法建議以消弭食安爭議。

**關鍵詞：**免驗查扣、邊境查驗、舉證責任、不法外觀、食品安全

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## **“Detention Without Physical Examination” in the American Food Importing System**

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### Abstract

The purpose of the “detention without physical examination” (DWPE) rules is based on the precautionary perspective to prevent the American consumers from injuries due to defective food or drug products. The system enables the Food and Drug Administration detain problematic products in borders through promulgating import alerts. The system has the benefits of quickness and efficiency. However, the system has shortcomings including the timing to discover problematic products and the potential to be deemed as unreasonable trade obstacles under the legal framework of the World Trade Organization. But the system authorizes the FDA the power to detain products in the borderlines and prohibited them from being imported without any prudent evidence or even only based on the appearance of the products. This approach may shift the burden of proof from the importing country and to prevent political disputes by legal mechanisms. The purpose of this article is to understand the DWPE system, to analyze the problems of the system, and to propose recommendations to transplant this system to Taiwan. The article will first

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introduce the DWPE system, analyze important cases, then discuss the disputes under the WTO framework. In conclusion, the article will compare the difference between the Taiwan's importing rules and the DWPE system, and provide legislative amendment recommendations to solve the food safety disputes.

**Keywords:** Detention Without Physical Examination, Border Inspection, Burden of Proof, Appear to Be Adulterated, Food Safety